Secta. II-27—100,000—21-6-48.

FOOD (195 48 ) Department.

Ms. SERIES.

G.O. No. 689

Dated 27th July 1948

## [Despatch Abstract.]

Appeals - Criminal appeals - Application of penal provisions of Essential Supplies (Temporary Powers) Act, 1946 - Contravention of orders issued under late Defence of India Rules - Judgment in Full Bench of the Bombay High Court - Papers - Recorded.

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GOVERNMENT OF MADRAS
Food Department

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ENDORSEMENT NO. 20084-K/48-1, 14th May 1948.

APPEALS - Criminal appeal - Application of penal provisions of Essential Supplies (Temporary Powers) Act, 1946 - Contravention of orders issued under late Defence of India Rules and deemed to have been made under that Act - Judgment in full Bench of the Bombay High Court - Copies - Communication of

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Then we come to the Act which calls for an interpretation at our hands, and that in Act No.XXIV of 1946, section 3 is the enabling section which gives power to the Central Government to issue orders for the purpose of controlling production, supply, distribution, etc., of essential commodities just as section 3 of the Ordinance had given a similar power to the Government. Section 17 of the Act is the repealing and saving section. That section repeals Ordinance No.XVIII of 1946. Having repealed it, it proceeds to have the orders already made or deemed to be made under that Ordinance, and sub-clause (2) of that section says this:

"Any order made or deemed to be made under the said Ordinance and in force immediately before the commencement of this Act shall continue ~~x~~ in force and be deemed to be an order made under this Act."

The penal section is section 7 which provides:

"If any person contravenes any order made under section 3, he shall be punishable in the manner provided in that section."

Now, it is contended on behalf of the accused by Mr. Amin that looking to section 7 of the Act, ~~it is contended on behalf of the accused by Mr. Amin that looking ~~s~~ to section 7 of the Act~~, it is clear that what is made penal is only the contravention of an order made under section 3; the section in terms does not make penal the contravention of an order deemed to be made under section 17. Mr. Amin further strengthens this argument by pointing out that the Ordinance which was repealed by this Act made it perfectly clear under section 8 that what was to be punished was not merely the contravention of an order made but also the contravention of an order deemed to be made, and it is argued that the difference in the language used in section 8 of the Ordinance and that in section 7 of the Act clearly leads to the inference that while the Legislature when passing the Ordinance wanted to punish the contravention of an order deemed to be made, the Legislature in passing Act No.XXIV of 1946 intended by only to punish the contravention of an order made under section 3 and not the contravention of an order deemed to be made under section 17.

In our opinion the argument advanced by Mr. Amin is untenable because the whole object of section 17 of the Act is to put orders deemed to be made on the same footing as orders made under section 3 of the Act, to give these orders as much penal footing as orders made under section 3 of the Act. If that were not so, it is difficult to understand why section 17(2), at least the first part of it, was ever enacted. If we have to give effect to that provision in Act No.XXIV of 1946, the only effect we can give to it is to apply it to the penal provisions contained in the Act. If one looks to the scheme of the Act, section 7 and all subsequent sections from section 8 right up to section 16 deal with penal provisions and they all refer to orders made under section 3. If Mr. Amin's contention was sound, the result would be that section 17(2), the first part of it, would be rendered completely nugatory and would have no effect whatever.

same force and the efficacy + to make contravention to those orders.

It is perfectly true that in construing a statute the Court ~~is~~ is entitled to look at the history of prior legislature, especially look at statutes which are in sori materis and which deal with the samexxx subject. It is also true that ordinarily the Court would give some effect to a change in language effected by the Legislature, because the normal canon of construction is that the Legislature does not do anything without having some object for doing it, and therefore when the Legislature deliberately change the language. But it is an equally clear canon of construction that if it is found that the language used in two statutes is different and that the language used in the earlier statute...

Pursued in two. Statutes dealing with the same subject matter ordinarily some effect is to be given to the change in language.

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was/necessary or superfluous and the Legislature deletes the unnecessary and superfluous part from the statute, no inference or presumption can be drawn from the change of language. In our opinion, when an order which has already been made is treated by the statute to be the same as the order to be made under the enabling section of the Statute, then it is unnecessary and superfluous to maintain the distinction in the rest of the statute between an order made and an order deemed to be made. The whole object of the Legislature in treating an order which has not been made under that Statute but which has already been in existence of the same efficacy as an order made under the statute is to put both these orders on exactly the same footing and treat them alike. It is undoubtedly by a legal fiction that this is ~~the~~ done. But once that legal fiction is introduced, no further reason is left why a distinction of a difference in language should be maintained in different sections of the statute. If one turns to the Ordinance No.XVI of 1946, one finds that this dual language, viz., "orders made" and "orders deemed to be made" is maintained in several sections of that ordinance, and it is clear that as a matter of drafting when the Legislature passed Act No. XXIV of 1946 they thought it better to omit the dual language and do away with the difference between the orders made and orders deemed to be made, and having enacted section 17, in the rest of the statute it has only referred to orders made and not orders deemed to be made.

It is also well settled that if the Court comes to the conclusion from a study of the whole statute that the Legislature had a particular intention in putting that legislation on the Statute Book then the Court would shrink from ~~refe~~ inferring that that intention has not been carried out. The Court would also, unless driven to such a necessity not permit the intention of the Legislature to be defeated or to be rendered a nullity. It is perfectly true, as Mr. Amin has pointed out, that there are cases where although the Legislature has a particular intention, it fails to carry out that intention by expressing it in proper language. But unless the language of the statute is so intractable or so incapable of that particular interpretation the Court must try and see that the intention of the Legislature gathered from the statute itself is carried out and not defeated. When this question came before ~~x~~ my brothers Sen and Jahagirdar JJ. in Appeal No.431 of 1947, Imperator v. Darjee Ravjee Chaturbhai decided on 20th January 1948 they took the view that looking to the difference in the language between the Ordinance No.XVIII of 1946 and Act XXIV of 1946, they had no other option but to come to the conclusion that the Legislature did not intend to make the contravention of orders deemed to be made penal under the latter Act. Both the learned Judges did take the view that the intention of the Legislature was undoubtedly to make penal orders of both the kinds. With very great respect, once that Bench came to the conclusion that the intention of the Legislature was clear and was to be gathered from section 17 of the Act, the mere deletion or omission of unnecessary and superfluous words which had occurred in the Ordinance did not lead to the conclusion that a radical change was intended by the Legislature in its intention and object.

The Government Pleader has drawn our attention to both Maxwel on Interpretation of Statutes and Craies Statute Law, and both these learned writers bear out the statement of the law to which we have just given expression. Maxwell on Interpretation of Statutes, ninth edition, at page 329 states:

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"A change of language effected by the omission in a later statute of words which occurred in an earlier one would make no difference in the sense when the omitted words of the earlier enactment were unnecessary."

Therefore the test which the learned author applies ~~is~~ is whether the omitted words were or were not necessary in the enactment. In our opinion the omitted words were not necessary in the Ordinance No.XVIII of 1946. Craies on Statute Law at page 102 states:

"The question at times arises whether, admitting a statute to have a certain intention, it must, through defective drafting or faulty expression, fail of its intended effect. The rule on the subject laid down in the Privy Council in Salmon v. Duncombe (1886) II App: Cas. 627, 634 is as follows: It is however, a very serious matter to hold that, where the intention of a statute is clear, it shall be reduced to a nullity by the draftsman's unskilfulness or ignorance of law. It may be necessary for a Court of Justice to come to such a conclusion, but their Lordships hold that nothing can justify it except necessity, or the absolute intractability of the language used."

So, the Privy Council went to the length of stating that even where the draftsman was unskilful or ignorant of law the Court should try and carry out the intention of the Legislature. In this case we cannot accuse the draftsman either of unskilfulness or ignorance of law. If anything in our opinion, the language of the statute has been made clearer, and unnecessary and superfluous words have been omitted in passing Act XXIV of 1946.

In our opinion, therefore, the answer must give to the question which comes up before us in the affirmative.

Per Bhagwati, J.--

The Defence of India Act, 1939, and the Defence of India Rules made thereunder were coming to an end on the 30th September 1946, and therefore an emergency arose which made it necessary to provide for the continuance of certain provisions of the Act and the Rules made thereunder as also for the continuance during a limited period of powers to control the production, supply and distribution of, and trade and commerce in, certain essential commodities. Therefore it was that the Ordinance Nos. 18, and 20 of 1946 were promulgated on the 25th September 1946.

Under Ordinance N6.XVIII of 1946, until other provisions were made thereunder, the orders made by whatever authority under Rule 80-B or sub-rule (2) or sub-rule (3) of Rule 81 of the Defence of India Rules in respect of any matters specified in section 3 of the Ordinance ~~xx~~ which ~~xxx~~ were in force immediately before the commencement of the Ordinance were to continue in force and that Ordinance continued all the existing orders with relation to the production, supply and distribution of, and trade, and commerce in certain essential commodities. It appears that no other provision was made under the Ordinance and the only thing which was done was the enactment by the Indian Legislature of Act XXIV of 1946 which received the assent of the Governor-General on the 19th November 1946. Under section 17 of that Act the Ordinance No.XVIII of 1946 was repealed. But it was enacted that any order made or deemed to be made under that Act, was to continue in force and was to be deemed to be

the same ordinance and in force immediately before the commencement of

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an Act order made under that Act, and all appointments made, licences or permits granted and directions issued under any such order and in force immediately before such commencement were likewise continued in force and were to be deemed to be made, granted or issued in pursuance of that Act. Section 3 of that Act empowered the Central Government to control production, supply, distribution, etc:, of essential commodities, which powers were the same as those which were enacted in section 3 of the Ordinance No.XVIII of 1946. When one goes to the provisions of Ordinance No.XVIII of 1946, one finds that the phraseology adopted by the draftsman was that orders made under the Ordinance and which were deemed to be made under the Ordinance both being of subject-matter of the enactment, the orders which would be made under section 3 of the Ordinance and the orders which were to continue in force under section 25 thereof were referred to separately as "orders made" and "orders deemed to be made" respectively. This was also the phraseology which was adopted by the draftsman of Ordinance No.XX of 1946. When, however, Act XXIV of 1946 came to be ~~de~~ enacted, the draftsman in the main body of the Act set out provisions relating to orders made under the Act and section 3 thereof, and it was only when he came to section 17 of the Act that he made provisions for the continuance in effect of the orders made under the ~~Act~~ and Ordinance No.XVIII of 1946 and orders which were deemed to be made under that Ordinance by virtue of the provisions of sec. 5 thereof. These orders were to be on the same footing as the orders which would be made by the Central Government under section 3 of the Act and the ~~Act~~ orders which would be made under sec. 3 of the Act and which under section 17 of the Act were deemed to be made under the Act were both treated on the same footing. In this view, it was not necessary to enact in the main body of the Act any special provisions for the orders which were deemed to be made under the Act. It would have been absolutely superfluous to do so in so far as under sec. 17 the same effect was given to the orders deemed to be made under the Act as to the orders made under section ~~m~~ 3 of the Act It is clear therefore that the deletion of the words "orders deemed to be made under Act" from the earlier sections of the Act, which expression found its place in the Ordinance No.18 of 1946, was advisedly made as unnecessary or superflous. The intention of the Legislature in the enactment of Act XXIV of 1946 was quite clear. It wanted to penalise the contravention of all orders which were the subject-matter of section 3 of the Act, and it comprised within that category not only the orders which were specifically to be made under sec. 3 of the Act but also the orders which were deemed to be mad made under the Act by virtue of section ~~m~~ 17 of the Act. This being the position, it could not be attributed to the Legislature that its intention was only to penalise orders made under section 3 of the Act and to exclude from the provisions of the penal section enacted therein orders deemed to be made under the Act by virtue of section 17 of the Act.

Act and section 3 Kare and it was only when he came to section 17 of the act that he made provisions for the continuance in effect of the orders made under the

I, therefore, agree with the opinion expressed by the Learned Chief Justice and also the answer given by him to the question referred to this Full Bench.

Per Tendolkar J.--

The question referred to this Full Bench is:

"Whether section 7 of Act XXIV of 1946 makes ~~him~~ punishable the contravention of orders deemed to be orders made under the Act by virtue of the provisions of section 17(2) of the Act ?"

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Now, that Act XXIV of 1946 was passed in order to provide for the continuance of powers to control the production, supply and distribution of, and trade and commerce in, certain commodities. Section 3 of that Act confers powers on the Central Government to exercise the necessary control by "notified orders." Section 7 of the Act makes any contravention of an order made under section 3 penal. Section 17, sub-section (1) then provides that the Essential Supplies (Temporary Powers) Ordinance, 1946 is repealed, and sub-section (2) of that section states:

"Any order made or deemed to be made under the said Ordinance and in force immediately before the commencement of this Act shall continue in force and be deemed to be an order made under this Act."

Of course, an order can be made under this Act only under section 3 thereof; and therefore the words of the sub-section in effect enact that certain orders shall be deemed to be orders made under section 3 of the Act.

In order to understand what those orders are, it is necessary to look at prior legislation. During the emergency created by the last Great War the Defence of India Act was in force; and the Defence of India Rules which were promulgated thereunder provided for powers to make orders for maintaining supplies and services essential to the life of the community, etc., and also rendered any contravention of such orders penal. These rules, however, ceased to have legal effect by efflux of time on the 30th September 1946. Government, therefore, promulgated an ordinance, being Ordinance No. XVIII of 1946, which came into effect on the 1st of October 1946. Section 3 of that Ordinance conferred powers upon Government to control production, supply, etc., by notified orders and section 5 of that Ordinance provided:

"Until other provisions are made under this Ordinance, any order, whether notified or not, made by whatever authority under rule 80-B, or sub-rule (2) or sub-rule (3) of rule 81 of the Defence of India Rules in respect of any matter specified in section 3, which was in force immediately before the commencement of this Ordinance, shall, notwithstanding the expiration of the said rules, continue in force so far as consistent with the Ordinance and be deemed to be an order made under section 3."

The position, therefore, is that when Act No.XXIV of 1946 was enacted, there were in force orders made under the Defence of India Rules which by reason of the provisions of section 5 of Ordinance No.XVIII of 1946 were deemed to be orders made under that Ordinance. There may have been further orders made under that Ordinance; and both these sets of orders by virtue of the provision of section 17(2) of that ACt No.XXIV of 1946 must be deemed to be orders made under section 3 of that Act. The result, to my mind, is, reading the Act by itself and apart from its history, that wherever the words "any order made" appeal in that Act, the words "or deemed to be made" will be read as implied by virtue of the provisions of section 17(2). I have, therefore, no hesitation in holding that reading Act No.XXIV of 1946 by itself, an offence is committed under section 7 if a person contravenes the provisions of of an order deemed to have been made under section 3.

But the question had come up before a Division Bench of this Court where my learned brothers Sen J. and Jahagirdar J. upon a comparison of the language employed in Act No.XXIV of 1946 with that used in Ordinance No.XVIII of 1946, came to the decision to ....

to the conclusion that it was the intention of the Legislature in enacting Act No.XXIV of 1946 to exclude from the penal sections ordprs deemed to have been and made under section 3 of the Act. The respect in which I held my two learned brothers requires me to consider this argument with all the care that I am capable of.

Ordinance No.XVIII of 1946, no doubt, in its penal section, which in section 8, specifically provides not only that the contravention of orders made under the Ordinance ~~specifically~~ shall be penal but also that the contravention of any order deemed to be made under section 3 will also be penal. But if we look at the other sections of the Ordinance, it is perfectly plain that this dual phraseology of "an order made or deemed to be made under section 3" has been used throughout that Ordinance. It appears, for instance, in sections 9, 10, 11, 12, 13, 16(1) and 17(1) and (2). As I read the Ordinance, if the words "or deemed to be made" had been omitted from all those sections as well as from section 8, it would have made no difference to the meaning of that Ordinance at all, because, by virtue of section 5 of that Ordinance to which I have already referred, certain orders were deemed to be made under section 3; and, to my mind, the use of the alternative phraseology "or deemed to be made" was entirely redundant and unnecessary. That being so, no inference can arise from the fact that the Legislature has thought it fit to change the language of Ordinance No.XVIII of 1946 in enacting Act No.XXIV of 1946. The words "or deemed to be made" are omitted in the Act not only from the penal section 7 but also from sections 13, 8, 9, 10, 15, 14 (1) and 16(1) and (2) which correspond respectively to the sections of the Ordinance which I have enumerated above. The object in doing so was quite obviously to avoid the unnecessary repetition of these words in all these sections and to improve the drafting to that extent. I am unable to hold that any change in the law was either intended or effected by deletion of these words.

In ~~eas~~ a case decided by the Federal Court in Nibarondu Dutt Mujumdar vs. The King Emperor (1942 P.C.C.38 the question before Their Lordships was whether definition of, "prejudicial act" given in the Defence of India Rules had the same meaning as the definition of "edition" under section 124-A of the Indian Penal Code. It was argued that section 124-A contained Explanations which had been omitted from the definition of "prejudicial act" contained in rule 34 (6) of the Defence of India Rules, Sir Maurice Gwyer, the then Chief Justice of the Federal Court, in delivering judgment stated at page 48:

"We do not think that the omission in the rules of ~~thre~~ the three 'Explanation' appended to the section of the Code affects the matter. These are added to remove any doubt as to the true meaning of the Legislature; they do not add to or subtract from the section itself and the words used in the rules ought to be interpreted as if they had been explained in the same way."

Applying the same analogy to the point before us, I have no doubt that the words "deemed to be made" were used in Ordinance No.XVIII of 1946 in order to make the intention of the Legislature amply clear. They did not add to or subtract from the provisions of the respective sections in which they appear; and therefore their deletion in Act No.XXIV of 1946 has, to my mind, no effect on its meaning at all.

That....

That being my view, I am clearly of opinion that by reason of section 17 (2) the words "or deemed to be made" must be read in every section of the Act wherever the words, "order made" appear. Section 7 is only one of such sections; and therefore an offence is committed if there is a contravention of any order deemed to be made under section 3 of that Act.'

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ENDORSEMENT--No.20084-K/48-1 Food (K), dated 14th May, 1948.

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Communicated.

M.A. Kuttalalingam Pillai,
Secretary to Government.

To the Board of Revenue (Civil Supplies)
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Food Department.

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The papers may be recorded for facility of future reference.

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23-7-1948

'A' above -

The papers may be recorded as--

G.O.Ms.No.689 Food, dated 27th July 1948.

Abstract

APPEALS - Criminal appeals - Application of penal provisions of Essential Supplies (Temporary Powers) Act, 1946 - Contravention of orders issued under late Defence of India Rules - Judgment in Full Bench of the Bombay High Court - Papers Recorded.

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Office Assistant,
Madras Record Office.

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